IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 95

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUSSELL & CO., S. EN C.,
Respondent.

PETITION FOR REHEARING

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a reconsideration of the decision of this Court affirming the judgment of the Circuit Court of Appeals, First Circuit, which had reversed that of the Supreme Court of Puerto Rico. Petitioner prays that the order and judgment of this Court entered herein on March 16, 1942, be vacated, and that a re-argument of the case be ordered, and that, as prayed in the original petition for certiorari, the judgment of the Circuit Court of Appeals be reversed and vacated, and that of the insular Supreme Court be affirmed.

And in support of this petition for such reconsideration and re-argument and rehearing, this petitioner respectfully shows that the decision of this Court was by a divided Court, with a dissenting opinion in which four of the Justices of the Court joined; and petitioner respectfully suggests that the prevailing majority opinion

overlooks the established rule and doctrine of this Court in relation to decisions of Territorial courts of last resort, including particularly the Supreme Court of Puerto Rico, that the decision of such a court interpreting a local statute or local contract is to be respected and not overthrown unless "inescapably" wrong, even though it be different from the interpretation which this Court might itself consider the more reasonable one.

In the present case four of the Justices of this Court agree with the insular Supreme Court's interpretation of the local statute and the local contracts upon which the case turns. It is respectfully submitted that that fact alone is in itself sufficient to indicate that the insular court's interpretation is not so necessarily or "inescapably" wrong as to justify its being overthrown, under the rule heretofore established by a long chain of decisions of this Court.

The long-established continuity of the rule, and its importance as a crystallization of one of the cardinal underlying principles concerning the relation of Territorial governments to the Federal Government, have been emphasized in recent decisions here. It will be remembered that this Court said in *Sancho Bonet, Treasurer of Puerto Rico* vs. *The Texas Company*, 308 U. S. 463, 470-471:

> "For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney* v. *Lomme*, 22 Wall. 208, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co., supra*,[1] decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. As this court recently stated, 'Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local

[1] 306 U. S. 505, 509-511.

procedure and tribunals of the Island.' *Bonet* v. *Yabucoa Sugar Co., supra,* p. 510.

"We now repeat once more that admonition. . . . *To reverse* a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it *would not be sufficient if we* or the Circuit Court of Appeals *merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations.* And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous.

"Measured by such a test the judgment of the Supreme Court of Puerto Rico should not have been reversed." (*Italics supplied.*)

The same rule was recognized and relied upon by this Court in other recent decisions, notably in *Waialua Agricultural Co.* vs. *Christian,* 305 U. S. 91, 108-110, and in its decision in case No. 96 at the present term, *The People of Puerto Rico* vs. *Rubert Hermanos, Inc.,* decided March 16, 1942 (*Opinion,* p. 6-7).

In the present case, as above indicated, the decision necessarily turned upon the insular Supreme Court's interpretation of the language of the 1914 contracts and of the insular statute of 1913, under which the Commissioner of the Interior entered into the contracts on behalf of the insular government,—particularly of the connotation to be given the word "delivery" as used in that local statute and in those local Puerto Rican contracts. The respondent company contended, and the majority opinion of this Court holds, that the insular Supreme Court was wrong in holding that that phraseology, in view of all the circumstances and the local background of law and fact, was not to be interpreted as necessarily binding the in-

sular government to pay for the cost of bringing the water to the points where the company was to receive it under the contracts; and that, therefore, the Circuit Court of Appeals did not err in overruling the insular Supreme Court in this respect. The four dissenting Justices of this Court, to the contrary, agree with the insular Supreme Court's views in the interpretation of the statute and the contracts.

The prevailing majority opinion holds (*Opinion*, p. 6), after quoting the language of Section 13 of the Act of 1913, which used the words "delivery", and "shall be delivered to the lands":

> "We think it evident from this language that the Commissioner was not limited to agreeing to allot to the land-owner a certain amount of water but was empowered to stipulate that at certain times he would cause to be delivered, at specified places, the water which respondent was to receive as the equivalent of that which it had formerly been entitled to take at its intakes along the river. That the Commissioner so construed his authority is plain from the terms of the contracts";

and again (*Opinion*, p. 7):

> "From the four corners of the agreements it is clear that, in consideration of the suspension of the rights of Fortuna, and its successor, the respondent, the insular government agreed not merely to allot, but to deliver, at specified places, certain quantities of water. * * *. This fact is emphasized by the provision that, if it desires delivery at other places than those specified in the contracts, it shall bear the expense entailed by the change."

To the contrary, the dissenting opinion of MR. JUSTICE DOUGLAS in which MR. JUSTICE BLACK, MR. JUSTICE MURPHY, and MR. JUSTICE BYRNES join, says (*ibid.* pp. 9-10):

> "The contracts, as well as the statute, speak of 'delivery' of the water. But the Supreme Court of

Puerto Rico interpreted the contracts as meaning that respondent 'agreed to *receive* [italics supplied][2] from the irrigation system a certain quantity of water in exchange' for its water rights. I do not think that that construction is unwarranted.

"(1) The contracts themselves make plain that as respects certain intakes on the river 'the presence of water in the river bed . . . in quantities sufficient to permit the taking at the said intakes, of the amounts of water specified shall be deemed to be deliveries'. That provision alone demonstrates that the Supreme Court of Puerto Rico was justified in interpreting 'delivery' in these contracts differently than might be warranted in case of contracts for the cartage of goods. 'The word "deliver" has perhaps as many different shades of meaning ascertained by judicial interpretation as any other term known to the law.' *United States* v. *McCready*, 11 Fed. 225, 234. The problems of operation of an irrigation system are unique in many respects. Manipulation of the gates at the dam determines the flow of water through the various channels. Puerto Rico's undertaking in each instance was to 'deliver' water at specified intakes provided by respondent. Those intakes were in the river or in designated reservoirs provided by respondent. It seems reasonable to conclude that Puerto Rico's undertaking was to make the specified quantities of water available so that they would be received at those intakes. To enforce the present tax is not to renig on that undertaking. The fact that respondent was to bear 'all extra expenses' in case water was delivered at intakes other than the designated ones seems to me hardly more than a provision that respondent was to bear the cost in case the irrigation system had to be partially relocated to meet its requirements. In any event, it does no more than raise a doubt as to the correct interpretation of the contract—a doubt which, as subsequently pointed out, should not be resolved against the power of Puerto Rico to impose this tax.

[2] "Supplied" in the dissenting opinion itself.

"(2) It seems to me tolerably clear that such a construction of the contracts comports with the purpose of the arrangement. * * *"

The dissenting opinion goes on to invite attention (pp. 11-12) to the applicability of the established rule that the granting away of the taxing power "is never to be assumed", and that "If there are doubts, they must be resolved in favor of the government"; that "If there be any doubt on these matters, * * * the exemption does not exist[3]"; and concludes (p. 12):

> "The meaning of the word 'delivery' as used in the contracts is at best ambiguous. Hence, we should strictly adhere to the presumption against exemption from taxation. To resolve all ambiguities in the contracts in respondent's favor and against Puerto Rico is to forsake a canon of construction which has long obtained.
>
> "In conclusion, Puerto Rico has not treated respondent the same as landowners who have no water rights. The latter have to pay for the construction of the irrigation system as well as for its maintenance and operation. Respondent on the other hand is merely required to contribute toward the cost of maintenance and operation of the system. On these facts that favored treatment is sufficient respect for the integrity of respondent's property rights. To free it from all burden is to give it a windfall. Only under the compulsion of plain unambiguous language should we permit a beneficiary of such a project to escape his fair share of the costs. There is no such compulsion here."

The long established rule of this Court as to the respect to be accorded to decisions of a Territorial court of last resort interpreting local contracts and local statutes is one of the fundamental principles of the relation be-

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[3] Citing *Providence Bank* v. *Billings*, 4 Pet. 514, 561; *Wells* v. *Savannah*, 181 U. S. 531; *Chicago Theological Seminary* v. *Illinois*, 188 U. S. 662; *Metropolitan Street Ry. Co.* v. *New York*, 199 U. S. 1, 35-36.

tween the *quasi*-sovereign Territorial governments and the federal government. As to the general purpose of the Congress in framing the Territorial governments, and particularly with relation to the Territorial government of Puerto Rico, this court, in the *Shell Company* case, after referring to the provisions of the Organic Act for Puerto Rico, said (*Puerto Rico* vs. *The Shell Co.*, 302 U. S. 253, 260-261):

> "These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, in respect of which this court said in *Clinton* v. *Englebrecht*, 13 Wall. 434, 441, that the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; and in *Hornbuckle* v. *Toombs*, 18 Wall. 648, 655-656, we said: 'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature.' * * *. (at p. 260)
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> "2. The aim of the Foraker Act[4] and the Organic[5] Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories. *Gromer* v. *Standard Dredging Co.*, 224 U. S. 362, 370; *Porto Rico* v. *Rosaly y Castillo, supra*,[6] p. 274. The effect was to confer upon the territory many of the attributes of a *quasi*-sovereignty possessed by the states —as, for example, immunity from suit without their consent. *Porto Rico* v. *Rosaly y Castillo, supra.* By those acts, the typical American governmental structure, consisting of the three independent departments—legislative, executive and judicial—was erected. 'A body politic'—a commonwealth—was created, 31 Stat. Sec. 7, c. 191. The power of taxation, the

[4] First Organic Act, April 12, 1900, c. 191, 31 Stat. 77.
[5] Act of March 2, 1917, c. 145, 39 Stat. 951.
[6] 227 U. S. 270.

power to enact and enforce laws, and other characteristically governmental powers were vested."

And this Court has emphatically recognized the tripartite character and the coordinate powers of the three great departments,—the executive, the legislative, and the judicial—as "*implicit in all*" the territorial governments established by the Congress (*Springer* vs. *Philippine Islands*, 277 U. S. 189, 201). The Organic Act for Puerto Rico[7] likewise recognizes this, emphatically. It places the "supreme executive power" (Sec. 12) in the governor; "all local legislative powers" (Secs. 25, 37) in the legislature; and directs that "the judicial power shall be vested" (Sec. 40) in the supreme court of Puerto Rico and the inferior insular courts.

As to the legislative power the Congress reserved to itself (Sec. 34) "the power and authority to annul" all acts of the legislature,—as it has habitually done in organic acts for Territories, at least ever since the organic act for Wisconsin Territory, April 20, 1836 (Sec. 6; 5 Stat. 10, 12-13). But with relation to acts of Territorial legislatures *the Congress has practically never exercised the power to annul;* and has never done so with relation to Puerto Rico. As to the legislative branch of the Territorial governments, it has become thoroughly established,—and has been recognized by this Court in repeated decisions, as indicated in the opinion in the *Shell Company* case above quoted,—that "The powers thus exercised by the Territorial legislature are nearly as extensive as those exercised by any State legislature", and that, with the exceptions noted in the Organic Act itself, "the power of the Territorial legislature was apparently as plenary as that of the legislature of a State".

The long chain of the decisions of this court,[8]—begin-

[7] Act of March 2, 1917, c. 145, 39 Stat. 951, 955, 958, 961, 964, 965.

[8] 1874—(Montana Territory)—*Sweeney* v. *Lomme*, 22 Wall. (89 U. S.) 208, 213. MILLER, J.

ning as far back as *Sweeny* v. *Lomme*, 22 Wall. (89 U. S.) 208, 213, in 1874, and coming down in unbroken sequence to the recent decisions in *Waialua Agricultural Co.* v. *Christian*, 305 U. S. 91, 108-110, *supra*; *Inter-Island Co.* v. *Hawaii*, 305 U. S. 306, 311; *Sancho Bonet, Treasurer* v. *Yabucoa Sugar Co.*, *supra*, 306 U. S. 505, 509-511; with *Sancho Bonet, Treasurer* v. *The Texas Co.*, *supra*, 308 U. S. 463, 470-472, and the decision in case No. 96 at this term, on March 16, 1942, in *People of Puerto Rico* v. *Rubert Hermanos, Inc.*—constitute, with reference to the *coordinate judicial department* of the Territorial government, like recognition of the respect to be accorded to that co-ordinate branch, along lines parallel to the Congressional and judicial recognition above noted of the respect to be accorded to the legislative branch of

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1894—(Dakota Territory)—*Northern Pac. R. Co.* v. *Hambly*, 154 U. S. 349, 361.
[Supreme Court of Territory; although this case not decided until after Statehood:
"We may safely assume that the construction thus given to this statute will not be overruled by the courts of the two States which have succeeded the Supreme Court of the Territory without most cogent reasons for their action."] BROWN, J.; [The CH. J. (FULLER), FIELD and HARLAN, dissenting].

1895—(Utah Territory)—*Fox* v. *Haarstick*, 156 U. S. 674, 679. SHIRAS, J.

1897—(Utah Territory)—*Whitney* vs. *Fox*, 166 U. S. 637, 647. HARLAN, J.

1901—(New Mexico Territory)—*Armijo* v. *Armijo*, 181 U. S. 558, 561. PECKHAM, J.

1907—(Arizona Territory)—*Copper Queen Min. Co.* v. *Arizona Board*, 206 U. S. 474, 479. HOLMES, J.

1908—(Arizona Territory)—*Lewis* v. *Herrera*, 208 U. S. 309, 314. FULLER, J.

(New Mexico Territory)—*Crary* v. *Dye*, 208 U. S. 515, 519. MC KENNA, J.

those governments; and that what was said by this Court as to the character of those governments three-quarters of a century ago in *Clinton* v. *Englebrecht, supra,* 13 Wallace (80 U. S.) 434, 441, and quoted again by this Court in the *Shell Company case,* as above (*ante,* p. 7), that:

> "*The theory upon which the various governments* for portions of the territory of the United States have been organized, *has ever been that of leaving to the inhabitants all the powers of self-government* consistent with the supremacy and supervision of national authority and with certain fundamental principles established by Congress",

is just as applicable to the exercise of the local judicial power by the insular Supreme Court as it is to the exercise of the local legislative power by the insular

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(Hawaii)—*Kealoha* v. *Castle,* 210 U. S. 149, 153-154. WHITE, CH. J.

1909—(Arizona Territory)—*English* vs. *Territory Arizona,* 214 U. S. 359, 361, 363. MC KENNA, J.

(New Mexico Territory)—*Santa Fe County* v. *Coler,* 215 U. S. 296, 305. MC KENNA, J.

1910—(New Mexico Territory)—*Albright* v. *Sandoval,* 216 U. S. 331, 339. MC KENNA, J.

(Puerto Rico)—*Garcia Maytin* v. *Vela,* 216 U. S. 598, 601. HOLMES, J.

1911—(Hawaii)—*Lewers & Cooke* v. *Atcherly,* 222 U. S. 285, 294. (~~Arizona Territory~~). HOLMES, J.

1912—(Arizona Territory)—*Treat* v. *Grand Canyon Ry. Co.,* 222 U. S. 448, 451-452. HOLMES, J.

(Philippine Islands)—*Ker* v. *Couden,* 223 U. S. 268, 279. HOLMES, J.

(Arizona Territory)—*Clason* v. *Matko,* 223 U. S. 646, 653. MC KENNA, J.

1913—(New Mexico Territory)—*Gray* v. *Taylor,* 227 U. S. 51, 56-57. HOLMES, J.

(Puerto Rico)—*Cordova* v. *Folguerus,* 227 U. S. 375, 378-379. HOLMES, J.

Legislature. The Congress by the Organic Act has granted "the judicial power" to the insular Supreme Court and the inferior insular courts by Section 40 of the Act, in just as full measure, and without restriction, equally as it has granted all local legislative powers to the Legislature by Sections 25 and 37 of the Act. And likewise, habitually, in Territorial organic acts, it has granted the local judicial power on the one hand to the local Territorial courts, just as it has granted the local legislative powers on the other hand to the local legislatures, and as it has granted the local executive power to the governor.

(Arizona Territory)—*Phoenix Ry. Co.* v. *Landis*, 231 U. S. 578, 579-580. HUGHES, J.

1914—(New Mexico Territory)—*Santa Fe Ry. Co.* v. *Friday*, 232 U. S. 694, 700. HOLMES, J.

(Puerto Rico)—*Nadal* v. *May*, 233 U. S. 447, 454. HOLMES, J.

1915—(Philippine Islands)—*Villanueva* v. *Villanueva*, 239 U. S. 293, 298-299. WHITE, CH. J.

1916—(Puerto Rico)—*Cardona* v. *Quinones*, 240 U. S. 83, 88. WHITE, CH. J.

1923—(Puerto Rico)—*Diaz* v. *Gonzalez*, 261 U. S. 102, 105-106. HOLMES, J.

1937—(Puerto Rico)—*Matos* v. *Alonso Hermanos*, 300 U. S. 429, 432. MC REYNOLDS, J.

1938—(Hawaii)—*Waialua Agricultural Co.* v. *Christian*, 305 U. S. 91, 108-110. REED, J.

(Hawaii)—*Inter-Island Steam Nav. Co.* v. *Territory of Hawaii*, 305 U. S. 306, 311. BLACK, J.

1939—(Puerto Rico)—*Sancho Bonet, Treasurer* v. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511. BLACK, J.

1940—(Puerto Rico)—*Sancho Bonet, Treasurer* v. *Texas Company*, 308 U. S. 463, 470-472. DOUGLAS, J.

1942—(Puerto Rico)—*People of Puerto Rico* v. *Rubert Hermanos, Inc., et al.*, Case No. 96, decided March 16, 1942; *Opinion* 6-7. BYRNES, J. [The CH. J. and ROBERTS, J. dissenting.]

The Congress accordingly planned the personnel of the Supreme Court of Puerto Rico to be that of a court of dignity and responsibility. The Justices are appointed for life, by the President, by and with the advice and consent of the Senate of the United States.

The long chain of decisions of this Court recognizing the respect to be accorded to decisions of the local Territorial courts in local matters, in interpreting local statutes and local contracts, and the like, is, therefore, only the just,—and long settled,—recognition of the fact that it comports with the status, and the dignity, intended by the Congress to be conferred upon the Territorial courts by the grant of the judicial power, for this Court to recognize and to respect the finality of their decisions, in like manner as the Congress has habitually over all the years respected the finality of the decisions of the various Territorial legislatures in legislative matters, and has refrained from exercising its reserved power of censoring them by annulment. It is but the due recognition, as to one great department of the government, the judicial, as it has likewise been given to another, the legislative, that as to the entire Territorial government and every branch of it alike, the general Congressional purpose, upon which for a century and a half, as above quoted, the various Territorial governments have been organized,

> "*has ever been that of leaving to the inhabitants all the powers of self-government* consistent with the supremacy and supervision of national authority, and with certain fundamental principles established by Congress."

In accordance with that great principle this Court, in this long unbroken chain of decisions for three-quarters of a century now, has adhered to the doctrine that, as it was phrased in *Waialua Co.* v. *Christian*, *supra*, 305 U. S. 91, 109-110:

"While the 34th section of the Judiciary Act is not applicable to territories, the arguments of policy in favor of having the state courts declare the law of the state are applicable to the question of whether or not territorial courts should declare the law of the territories with the least possible interference. It is true that under the appeal statute the lower court had complete power to reverse any ruling of the territorial court on law or fact; but we are of the opinion that this power should be exercised only in cases of manifest error. * * * In so far as the decisions of the Supreme Court of Hawaii are in conformity with the Constitution and applicable statutes of the United States and are not manifestly erroneous in their statement or application of governing principles, they are to be accepted as stating the law of the Territory. Unless there is a clear departure from ordinary legal principles, the preference of a federal court as to the correct rule of general or local law should not be imposed upon Hawaii.

"*Decision of the Supreme Court of Hawaii.* To adopt the legal principles applied by the territorial supreme court in these cases as rules of decision in that jurisdiction, or to construe instruments as it interpreted them, is not manifest error."

And in the *Texas Company* case, *supra*, applying it concretely to Puerto Rico,

"To reverse a judgment of a Puerto Rican tribunal on such a local matter * * *, it would not be sufficient if we * * * merely disagreed with that interpretation. * * * For to justify reversal in such cases * * * the interpretation must be inescapably wrong; the decision must be patently erroneous."

It is respectfully submitted that it should be held and established by this Court, *as a necessary corollary to that rule*, that whenever, as in this case, the interpretation of a local statute or a local contract by the Territorial supreme court is sufficiently reasonable so that it commands the assent of more than one,—(as here, of four), —of the Justices of this Court, then it is not to be consid-

ered as "inescapably wrong" within the meaning of that rule; and should not be overthrown. Such a corollary appears to be a necessary adjunct to the rule, and is believed to be but an embodiment of the deference and respect fairly due to the judicial authority of the *quasi*-sovereign government of the People of the Territory; and to be, indeed, necessarily inherent in the rule expressed in the long chain of the decisions of this Court.

It is, therefore, earnestly requested on behalf of the insular government of the People of Puerto Rico that a rehearing and reargument be granted in this case.

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SUPREME COURT OF THE UNITED STATES.

No. 95.—October Term, 1941.

The People of Puerto Rico, Petitioner, vs. Russell & Co., Steven C.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[March 16, 1942.]

Mr. Justice Roberts delivered the opinion of the Court.

The question for decision is whether a statute of Puerto Rico impairs the obligation of certain contracts in violation of the Island's organic law.[1]

The respondent's predecessor in title, Fortuna Estates, as owner or lessee of lands adjacent to the Jacaguas River, enjoyed under Spanish law, and respondent, as successor, still enjoys, rights appurtenant to the lands to draw from the river 12,612.1 acre feet of water per year for irrigation.

Puerto Rico adopted a law in 1908[2] which authorized an irrigation system, as part of which a dam was to be erected in Jacaguas River above Fortuna's intakes. Fortuna's lands were not within or a part of the irrigation district. Although the operation of the system would interfere with Fortuna's water rights they were not condemned, as the statute permitted, nor were they voluntarily surrendered.

By an amendatory law adopted in 1913[3] it was provided: "In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to the People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession." This Act empowered the Commissioner of the Interior to make agreements with hold-

[1] "No law impairing the obligation of contracts shall be enacted." 48 U. S. C. § 737.

[2] Act of September 18, 1908, Laws of Porto Rico, 1909, p. 152.

[3] Act of August 8, 1913, Laws of Porto Rico, 1914, p. 54, § 13.

ers of such rights fixing the amount and the time, place, and conditions of delivery, of water to be received as the equivalent of the rights suspended.

In the exercise of this authority the Commissioner executed contracts with Fortuna which called for the suspension of its rights appurtenant to two large tracts during the life of the contracts and assured delivery of a specified amount of water at Fortuna's intakes as the fair equivalent of the rights suspended.

Each contract enumerated the rights to take water appurtenant to a described tract of land which would be impaired or interrupted by the operation of the irrigation system; recited that the amount of water taken by Fortuna under its rights varied throughout the year, due to differences in rainfall, so that it was impossible to determine in advance the amount of water to which it would be entitled in any given period; and that Porto Rico was willing to deliver from the Jacaguas River the water to which Fortuna was entitled, but, in order to make the operation of the system more certain, desired to agree upon a fixed and regular amount which should be received by Fortuna as the fair equivalent in value for irrigation purposes of the water it would ordinarily take and use under its existing rights.

The contract then stated the agreement of the parties as to the quantities of water which, delivered in equal daily instalments, were to be considered such fair equivalents and the petitioner covenanted to deliver these quantities to Fortuna. It was also agreed that Fortuna might exercise its preexisting rights for ten days in each year to prevent their loss by non-user.

Under the Irrigation Law, lands in a district were subjected to a uniform annual assessment per acre to discharge the cost of construction, maintenance, and operation of the system. Sales were also made of surplus waters and the proceeds used for maintenance.

Shortly after the contracts were made, a controversy arose between petitioner and respondent with respect to Puerto Rico's right to sell surplus waters. Litigation ensued which terminated in a decree restraining the insular government from diverting certain surplus waters to which the respondent was held to be entitled under the contracts. The decision also upheld the validity of the contracts.[4]

[4] People of Porto Rico v. Russell & Co., 268 F. 723.

Thereupon the legislature adopted, July 8, 1921, "An Act Fixing a Tax on Certain Lands using water from the Southern Coast Public Irrigation System, on which lands no Tax Whatever was Levied under the Public Irrigation Law, and for Other Purposes."[5] This is the statute enforcement of which is asserted to impair the obligation of the contracts. By this act a special tax is imposed on all lands supplied which, under existing law, contribute nothing to the expense of the maintenance of the system. The Treasurer of Puerto Rico is directed to compute the tax by finding the aggregate acreage receiving water from the system including lands, like those of respondent, outside the district but receiving the equivalents of their pre-existing rights under contracts. He is to assess a prorata share of the total expense against the lands of respondent and others similarly circumstanced. The Act, as is admitted, was aimed only at those who, like respondent, had contracted for the receipt of water in lieu of that to which they were of right entitled and whose lands were not a part of the irrigation district.

Action was instituted by petitioner in an insular court for the recovery of several years taxes so imposed.[6] The cause was removed to the United States District Court, where a motion to remand was denied and a judgment entered for the respondent on the merits. The judgment was affirmed by the Circuit Court of Appeals for the First Circuit,[7] but was reversed by this court for want of diversity of citizenship on which jurisdiction of the federal courts depended.[8]

After remand, the case was tried in the insular district court and the complaint was dismissed on the merits, on the ground that Act No. 49, of 1921, was an invalid impairment of the obligation of the 1914 contracts. The Supreme Court of Puerto Rico reversed and rendered judgment for the petitioner.[9] The Circuit Court of Appeals in turn reversed and reinstated the judgment of the insular district court.[10] We granted certiorari

[5] Act 49 of 1921, Laws of Porto Rico, 1921, p. 366.

[6] The preceding litigation and the necessity for bringing action for the tax rather than proceeding summarily will be found in Gallardo v. Havemeyer, 21 F. 2d 1012, and the Act of Congress of April 23, 1928, 45 Stat. 447.

[7] 60 F. 2d 10.

[8] People of Puerto Rico v. Russell & Co., 288 U. S. 476.

[9] 56 P. R. Dec. 343.

[10] 118 F. 2d 225.

as the case presents an important question arising under the Insular Organic Act. We hold that the judgment of the Circuit Court of Appeals was right.

By the Act of 1908,[11] the people of Puerto Rico undertook the construction of a public irrigation system. This necessitated the erection of a dam for impounding and storage of part of the waters of the Jacaguas River above the respondent's intakes, and the creation of an irrigation district. The statute recognized the necessity of providing a method for the acquisition of the rights of riparian owners whose land lay below the dam. Section 12 authorized the condemnation of existing water rights and the payment of their fair value to the owners. By the amendatory Act of 1913, the owners of lands which fell within the irrigation district could release their preexisting rights, have them valued, and be paid the value by credits against their proportionate share of the expense of the construction and operation of the system.[12] By Section 13 owners of lands having water rights, whose source of supply would be destroyed or impaired by the construction or operation of the system, who had not surrendered or relinquished their rights, were declared entitled to receive from the irrigation system an amount of water which would be the reasonable equivalent in value of the right or concession so destroyed or impaired. The Commissioner was authorized to negotiate contracts to this end with such owners.

It is evident that it was thought that lands such as those of the respondent could not be included within the proposed district. It is idle to speculate concerning the reasons for this decision; though it is clear that in order to realize the Government's purpose it was deemed necessary to reach an accommodation concerning preexisting valid water rights of land owners whose lands could not or should not be included in the irrigation district. In the case of such persons the purpose was to substitute a fair equivalent for the rights theretofore exercised. Such an arrangement offered mutual advantages to Puerto Rico and to the owners. Whereas Fortuna had, prior to the erection of the dam, the right to take over 12,000 acre-feet of water per year for irrigation, a proportion of surplus waters, and certain torrential waters, the supply was uneven and uncertain due to the irregularity of rainfall. It was, therefore, an advantage to the respondent's prede-

[11] *Supra*, Note 2.

[12] *Supra*, Note 3.

cessor to surrender its maximum rights in consideration of an agreement that there should be delivered to it, equally and evenly throughout the year, something less than the maximum it was entitled to take under preexisting conditions. On the other hand, it was an advantage to the irrigation system that it should not be obliged at any time to deplete its storage waters by furnishing the respondent the maximum amount which, if the water were available, it was entitled to receive.

The Insular Supreme Court held that the exaction is not precluded by the contracts and works no impairment of their obligation. It held the exaction is a tax; that the rights which the respondent owned prior to the construction of the irrigation system were taxable, and that the privileges it enjoys under the contract are equally so; that the contract contains no covenant not to tax these rights or privileges and, if it did, it would be beyond the power of the Commissioner. We cannot agree.

The assessment contemplated by Act No. 49 of 1921 is not a general tax laid for the support of government upon a property right or a franchise. This is expressly admitted by the petitioner in brief and in oral argument. In the brief it is said: "The special taxes or assessments here in question, if and when collected, will simply accrue to the special fund for the current operation and maintenance of the irrigation district, and thus serve only to lower the assessments upon other lands now taxed for such operation and maintenance. The insular Treasury can derive no direct benefit." And, in oral argument, counsel for petitioner frankly conceded that the money to be raised is not taxes in any way but merely an assessment against the respondent's land for the cost of delivering the water. If Puerto Rico had essayed to tax respondent's lands or its water rights by a general law, quite distinct questions would arise which we need not discuss.

Treated as an assessment of part of the cost of maintenance of the irrigation system, the petitioner insists that the exaction does not violate the obligation of the 1914 contracts. It asserts that the agreements were only that a given amount of water would be released, or made available, or allotted to respondent and therefore The People of Puerto Rico are free to charge to respondent the cost of delivering the water; and, further, that if the contracts, by their terms, precluded the imposition upon the respondent of this cost they are beyond the power of the Commissioner.

Section 13 of the Act of 1913 authorizes the Commissioner "to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of *delivery* thereof, which *shall be delivered to the lands* to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, ..." We think it evident from this language that the Commissioner was not limited to agreeing to allot to the land-owner a certain amount of water but was empowered to stipulate that at certain times he would cause to be delivered, at specified places, the water which respondent was to receive as the equivalent of that which it had formerly been entitled to take at its intakes along the river. That the Commissioner so construed his authority is plain from the terms of the contracts.

Each contract describes the rights appurtenant to the lands in question, acknowledges their validity, states the amounts of water the respondent's predecessor is entitled to take, and, in consideration of the mutual covenants of the parties, stipulates "that the quantities of water specified" in the agreement, "delivered uniformly through the year, subject to the terms and conditions specified in this agreement, ... are the fair equivalent in value of the water which the said Fortuna Estates takes under and pursuant to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery hereinafter provided for, *make delivery*" of the amounts of water specified in the agreement. Each contract further provides that "The People of Porto Rico will deliver the said water as follows". One agreement covenants that the water deliverable for some of the tracts shall be at the intakes provided by the owner, and that water deliverable to another tract shall in part be deliverable at such an intake and in part at a pumping station on the bank of the river. The right is reserved, upon notice by The People of Porto Rico, to change the place of delivery of certain of the water. It is further provided that if delivery at the points designated is temporarily interrupted, Porto Rico will deliver an equivalent amount of water at some other point. It is agreed that the presence of water in the river bed at the opening of the described intakes, sufficient to permit the owner to take the quantities specified in the agreement, shall be deemed a delivery within the meaning of the contract. A clause provides that

should the owner desire to take water for certain of the tracts at places other than the present intakes, Porto Rico will deliver the water at such other places but that "all extra expenses occasioned by such delivery shall be borne by" the owner.

The obligation of Porto Rico to deliver the named quantities is recognized in many clauses of the contracts. As applied to the petitioner, the word "deliver" appears ten times in each contract, the word "delivery" nine times, and the word "deliverable" four times, in one of the documents. From the four corners of the agreements it is clear that, in consideration of the suspension of the rights of Fortuna, and its successor, the respondent, the insular government agreed not merely to allot, but to deliver, at specified places, certain quantities of water. Prior to the execution of the contracts, Fortuna was under no obligation to the government to pay it any cost or expense for the bringing of the water to its intakes. The contract clearly contemplates that it is to be under none with respect to the water agreed to be delivered to it in lieu of that which it formerly had the right to take. This fact is emphasized by the provision that, if it desires delivery at other places than those specified in the contracts, it shall bear the expense entailed by the change.

The deficit in the maintenance cost of the system was met, for some time, by the sale of surplus water. The contract gives the respondent the right to a portion of such surplus water over and above the specified amounts to be delivered by the petitioner. The respondent sued to enjoin the petitioner from selling the surplus water to which it claimed to be entitled. The suit resulted in an injunction. The Government being thus deprived of the revenue theretofore used towards the maintenance of the system adopted the Act of 1921 with the evident purpose of recouping a portion of that expense from the respondent and others with whom it had made contracts in 1914 for the delivery of the stipulated amount of water to them without charge therefor. The history of the legislation shows that the proposed exaction was not a general tax but was an effort to collect from persons whose land was not in the irrigation system a portion of the expense of maintaining that system, whereas the contracts exempted them from contributing to such cost as a condition of receiving the stipulated amount of water from the system. This was a clear violation of the obligation of the contracts.

The judgment is affirmed.

Mr. Justice Douglas, dissenting.

There was no provision whatsoever in the grant of these water rights exempting them from any form of taxation. Hence if no contract had been made and the irrigation system had been constructed and respondent's lands had been serviced in precisely the same way as was done here, I should think that there would be no doubt but that the assessment would be valid. The Supreme Court of Puerto Rico relied for the validity of the assessment on such cases as *Knowles* v. *New Swedea Irrigation District*, 16 Ida. 217, 235, and *Bleakley* v. *Priest Rapids Irrigation District*, 168 Wash. 267. Those cases hold that under certain circumstances the owner of a water right may be brought into an irrigation district and forced to pay an assessment. As stated in the *Knowles* case (p. 241):

"Under our irrigation law as it existed at the time of the organization of this district and the assessments referred to were made, if the land of the plaintiff was properly included in said irrigation district, it was subject to assessment for benefits, provided it received any, whether the owner of said land owned a water right in connection therewith or not; for a person in an irrigation district may receive certain benefits regardless of whether the owner has a water right in connection therewith or not."

The reasons which permit the owner of a water right to be brought into an irrigation district are equally cogent here. For the impact of this assessment is not more rigorous than the assessment attendant on membership in an irrigation district. In fact, it is less, since respondent is being assessed only for a pro rata share of the cost of maintenance and operation of the system, not its construction.

It was clear and undisputed that respondent obtained substantial benefits from the irrigation system. (1) The quantity of water received by respondent from the system is 19% larger than what previously had been available from the earlier limited flow of the river. (2) The storage reservoir impounds flood waters which would be largely lost to respondent. The dam not only increases the amount of water available but makes possible regular and more continuous deliveries of the water. (3) The irrigation system has tapped new sources of water which feed the reservoir. No separation of that additional supply of water from the old supply is possible. As a result respondent obtains additional advantages

especially in dry years. (4) By reason of the construction and operation of the irrigation system the water is available at several different distribution points through canals rather than at the river bed alone.

In that posture of the case we would be faced with a determination by the legislature of Puerto Rico that respondent's lands were benefited and that respondent should pay an assessment. It has long been held that such a "determination is conclusive upon the owners and the courts". *Spencer* v. *Merchant*, 125 U. S. 345, 356. And see *Davidson* v. *New Orleans*, 96 U. S. 97; *Walston* v. *Nevin*, 128 U. S. 578. As stated in *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 176, 177, "the fact of the amount of benefits is not susceptible of that accurate determination which appertains to a demonstration in geometry"; the choice of methods employed "is one of these matters of detail in arriving at the proper and fair amount and proportion of the tax that is to be levied on the land with regard to the benefits it has received, which is open to the discretion of the state legislature, and with which this court ought to have nothing to do." And see *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324; *Milheim* v. *Moffat Tunnel Improvement District*, 262 U. S. 710, 721; *Roberts* v. *Richland Irrigation District*, 289 U. S. 71; *Chesebro* v. *Los Angeles County Flood Control District*, 306 U. S. 459.

The existence of the contracts does not call for a different result. The statute in question provided that owners of water rights such as respondent "shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession." The Commissioner of the Interior was authorized "to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the lands to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof". Act No. 128, § 13, August 8, 1913, L. 1914, pp. 54-84. The contracts, as well as the statute, speak of "delivery" of the water. But the Supreme Court of Puerto Rico interpreted the contracts as meaning that respondent "agreed to *receive* [italics supplied] from the irrigation system a certain quantity of water in exchange" for its water rights. I do not think that that construction is unwarranted.

(1) The contracts themselves make plain that as respects cer-

tain intakes on the river "the presence of water in the river bed . . . . in quantities sufficient to permit the taking at the said intakes of the amounts of water specified shall be deemed to be deliveries". That provision alone demonstrates that the Supreme Court of Puerto Rico was justified in interpreting "delivery" in these contracts differently than might be warranted in case of contracts for the cartage of goods. "The word 'deliver' has perhaps as many different shades of meaning ascertained by judicial interpretation as any other term known to the law." *United States* v. *McCready*, 11 Fed. 225, 234. The problems of operation of an irrigation system are unique in many respects. Manipulation of the gates at the dam determines the flow of water through the various channels. Puerto Rico's undertaking in each instance was to "deliver" water at specified intakes provided by respondent. Those intakes were in the river or in designated reservoirs provided by respondent. It seems reasonable to conclude that Puerto Rico's undertaking was to make the specified quantities of water available so that they would be received at those intakes. To enforce the present tax is not to renig on that undertaking. The fact that respondent was to bear "all extra expenses" in case water was delivered at intakes other than the designated ones seems to me hardly more than a provision that respondent was to bear the cost in case the irrigation system had to be partially relocated to meet its requirements. In any event, it does no more than raise a doubt as to the correct interpretation of the contract —a doubt which, as subsequently pointed out, should not be resolved against the power of Puerto Rico to impose this tax.

(2) It seems to me tolerably clear that such a construction of the contracts comports with the purpose of the arrangement. The contracts state that Puerto Rico "in order to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part, desires to determine and agree upon an amount of water which, delivered regularly, may, under all attending circumstances, be considered to be fair equivalent in value for irrigation purposes of the amount of water which the Fortuna Estates would under ordinary circumstances take and use under the said water rights and concessions". The amount of water actually obtained by respondent before the dam was erected apparently fell far below the amount to which it was entitled under their water rights. The contracts were designed to sub-

stitute for that latter theoretical figure one which would represent a "fair equivalent in value for irrigation purposes" of the amount of water which respondent would "under ordinary circumstances take and use" under its water rights. From Puerto Rico's point of view such a determination was important so that the demands on the dam could be reduced to known requirements and so that the erection of the dam would not result in a windfall to respondent. The latter certainly would transpire if the dam gave respondent an amount of water which it had not been able to obtain on its own without the irrigation system. Thus the specification in the confracts of the "fair equivalent" of the amount of water which respondent ordinarily would obtain under its water rights was nothing more than a determination of the then worth of the water rights in terms of acre feet of water. Under that view, the contracts did not raise the water rights to a higher constitutional dignity than they previously enjoyed.

(3) No express exemption from this form of taxation is to be found in the contracts. If that exemption exists, it is implied. But even though it be assumed *arguendo* that Puerto Rico's representative had the authority constitutionally to bargain away its taxing power, the exemption should not be inferred. Chief Justice Marshall stated in *Providence Bank* v. *Billings*, 4 Pet. 514, 561, that a relinquishment of a power to tax "is never to be assumed"; "its abandonment ought not to be presumed, in a case in which the deliberate purpose of the state to abandon it does not appear." If there are doubts, they must be resolved in favor of the government. *Wells* v. *Savannah*, 181 U. S. 531; *Chicago Theological Seminary* v. *Illinois*, 188 U. S. 662; *Metropolitan Street Ry. Co.* v. *New York*, 199 U. S. 1, 35-36. As stated in *Wells* v. *Savannah*, *supra*, pp. 539-540, a contract of exemption from taxation must "be clearly proved. It will not be inferred from facts which do not lead irresistibly and necessarily to the existence of the contract. The facts proved must show either a contract expressed in terms, or else it must be implied from facts which leave no room for doubt that such was the intention of the parties and that a valid consideration existed for the contract. If there be any doubt of these matters the contract has not been proven and the exemption does not exist."

That rule should be applied to this situation. It is clear that respondent is one of the beneficiaries of the irrigation system,

even though the additional amount of water which the erection of the dam enabled it to obtain be disregarded. The meaning of the word "delivery" as used in the contracts is at best ambiguous. Hence, we should strictly adhere to the presumption against exemption from taxation. To resolve all ambiguities in the contracts in respondent's favor and against Puerto Rico is to forsake a canon of construction which has long obtained.

In conclusion, Puerto Rico has not treated respondent the same as landowners who have no water rights. The latter have to pay for the construction of the irrigation system as well as for its maintenance and operation. Respondent on the other hand is merely required to contribute towards the cost of maintenance and operation of the system. On these facts that favored treatment is sufficient respect for the integrity of respondent's property rights. To free it from all burden is to give it a windfall. Only under the compulsion of plain and unambiguous language should we permit a beneficiary of such a project to escape his fair share of the costs. There is no such compulsion here. Hence we should refuse to let the contract clause of Puerto Rico's organic law produce an inequitable, unfair, and harsh result.

Mr. Justice BLACK, Mr. Justice MURPHY, and Mr. Justice BYRNES join in this dissent.